

HISTORICAL OVERVIEW OF BUREAU OF LAND MANAGEMENT

A. Significance of the Public Domain

1. The public domain lands of the United States have played major roles in American history:

-- Major points of diplomacy and, sometimes, warfare at acquisition

- Peace of Paris (1763) (53 m. acres)
- Louisiana Purchase (1803) (527 m. acres)
- Adams-Onís Treaty (1819) (43 m. acres)
- Oregon Treaty (1846) (180 m. acres)

HISTORICAL OVERVIEW OF THE BUREAU OF LAND MANAGEMENT

- Alaska Purchase (1867) (18.3 m. acres)
- Alaska Treaty (1867)

1.4 million acres total

-- Major points of diplomacy and, sometimes, warfare at acquisition
restoration, and of the public domain.
which is the basis for the public domain.
which is the basis for the public domain.
which is the basis for the public domain.

Employee Development Seminar

Agate Beach, Ore.

-- Doctrine of right of discovery
-- Doctrine of landlord/tenant relationship
and right of federal govt. to control
and regulate land use

Stephen Dow Beckham
Lake Oswego, Oregon

April 7, 1986

-- Virginia ceded the Old Northwest to U. S.
and a common fund for the use and
benefit of all the states.

-- Congress declared that the lands "shall be
faithfully and bona fide disposed of for
that purpose and for no other use or
purpose whatsoever"

BLM Library
Denver Federal Center
Bldg. 50, OC-521
P.O. Box 25047
Denver, CO 80225

U.S. Library
State Central Office
Box 100
St. Louis, Mo.
63102

HISTORICAL OVERVIEW OF BUREAU OF LAND MANAGEMENT

A. Significance of the Public Domain

1. The public domain lands of the United States have played major roles in American history:

--focal points of diplomacy and, sometimes, warfare at acquisition

- Peace of Paris (1783) [233 m. acres]
- Louisiana Purchase (1803) [523 m. acres]
- Adams-Onis Treaty (1819) [43 m. acres]
- Oregon Treaty (1846) [180 m. acres]
- Treaty of Guadalupe Hidalgo (1848) [334 m.]
- Purchase from Texas (1850) [78 m. acres]
- Gadsden Purchase (1853) [18.9 m. acres]
- Alaksa Treaty (1867)

1.4 billion acres total

--focal point of smoldering and continuing resentment, restiveness, and and litigation by Indian tribes, whose patrimony was unilaterally dispossessed often without their participation or approval

-Johnson's and Graham's Lessee v. McIntosh (1823):

- doctrine of right of discovery;
- doctrine landlord/tenant relationship and right of federal govt. to control and regulate land use

-Cherokee Nation v. Georgia (1831):

- Indian tribes are "domestic, dependent nations" with lesser sovereignty

--primary source of revenue:

- Virginia ceded the Old Northwest to U. S.
"AS A COMMON FUND FOR THE USE AND BENEFIT" of all the states.

- Congress declared that the lands "SHALL BE FAITHFULLY AND BONA FIDE DISPOSED OF FOR THAT PURPOSE AND FOR NO OTHER USE OR PURPOSE WHATSOEVER

--continuing source of federal responsibility

-NW Ordinance of 1787 and Constitution of 1789 spelled out continued federal supremacy over public domain lands

-New states had to agree not to tax the public domain lands and never "TO INTERFERE WITH THE PRIMARY DISPOSAL OF THE SOIL BY THE UNITED STATES IN CONGRESS ASSEMBLED, NOR WITH ANY REGULATIONS CONGRESS MAY FIND NECESSARY FOR SECURING THE TITLE TO SUCH SOIL TO BONA FIDE PURCHASERS.

B. Meeting the Challenge of the Public Domain: Survey

1. Disposition of the public domain in an orderly fashion was one of the first challenges facing the United States.

--program necessitated reflection, orderly approach, and method

--program launched in 1784 when Continental Congress established a committee to plan for locating and selling western lands

--program recommended:

-prior survey (before sales)

-north/south survey lines

-townships 6 miles square

--Land Ordinance of 1785 enacted program

-reserved sec. 16 for school support

-prescribed township plats to have lots 1 mile sq., numbered 1 to 36

-provided for appointment of surveyors and chainmen under the "geographer of the U. S."
[Thomas Hutchins, named July, 1781]

-required surveyor in field to note on his plats:

"AT THEIR PROPER DISTANCES, ALL MINES, SALT SPRINGS, SALT LICKS, MILL SEATS, THAT SHALL COME TO HIS KNOWLEDGE; AND ALL WATER COURSES, MOUNTAINS, AND OTHER REMARKABLE AND PERMANENT THINGS OVER OR NEAR WHICH LINES SHALL PASS, AND ALSO THE QUALITY OF THE LAND."

2. The system of rectangular survey, also known as the cadastral survey because it describes land in terms of legal identification, commenced in 1785

--Hutchins was told to begin: ". . . ON THE RIVER OHIO AT A POINT THAT SHOULD BE FOUND TO BE DUE NORTH FROM THE WESTERN TERMINUS OF A LINE WHICH HAS BEEN RUN AS THE SOUTHERN BOUNDARY OF THE STATE OF PENNSYLVANIA"

--Point established on August 20, 1785, on south bank of Ohio River. Andrew Porter, one of the four surveyors, wrote:

"THIS MORNING CONTINUED THE VISTA OVER THE HILL ON THE SOUTH SIDE OF THE RIVER AND SET A STAKE ON IT BY THE SIGNALS, ABOUT TWO MILES IN FRONT OF THE INSTRUMENT, BROUGHT THE INSTRUMENT FORWARD AND FIXED IT ON A HIGH POST, OPENED THE VISTA DOWN TO THE RIVER, AND SET A STAKE ON THE FLAT, THE NORTH SIDE OF THE RIVER (Cazier 1975:19)

C. Meeting the Challenge of Public Lands: Disposition

1. Public Debt Act of August 4, 1790 declared that proceeds from the sale of public lands: "ARE HEREBY APPROPRIATED TOWARD SINKING AND DISCHARGING THE DEBTS"

--concern was to shake off control or potential influence of bond holders on govt. by retiring debt

--project was to complete payoff by 1830's

--set land price at \$2.00/acre with 640 acres minimum tract available for purchase

2. Congress established General Land Office in 1812 in Treasury Department to administer land sales:

--sell lands pursuant to Acts of Congress

-\$122 m. generated, 1796-1842

--record titles of sale or distribution such as through military bounties or grants to states

--maintain land records

--supervise transfer of 500,000 acres to each public land state under the Act of 1841 (18 states benefitted)

--GLO transferred in 1849 (along with BIA) to Interior Department

3. General Land Office was to supervise three principal modes of disposal of public lands:

- (1) Sales for revenues,
- (2) Grants to states and corporations for internal improvements,
- (3) Grants to individuals for services to the govt.

D. Stages in BLM History

Marion Clawson, economist and former director of BLM, has written extensively about public lands and BLM's history; Clawson has identified several stages in the organization's development:

#1 Acquisition

--Process of taking Indian lands via international agreements and warfare

--Era nearly completed by 1867 with purchase of Alaska, but renewed occasionally such as thru the following:

-Weeks Act (1911): Enabled govt. to purchase eastern lands for national forest reserves

-O & C Revestment (1916): Supreme Court holding that O & C grant was to be "revested and reconveyed to U. S."

-Coos Bay Wagon Road Grant Revestment: reconveyed to U. S. because of failure to meet grant terms

#2 Disposal

--Major concern of GLO from 1812 until 1934. Clawson has noted:

"BEGINNING SLOWLY . . . IT CONTINUED UNABATED, OFTEN AT BREAKNECK SPEED, UNTIL 1934, WHEN PRESIDENT ROOSEVELT WITHDREW FROM PRIVATE ENTRY ALL THE REMAINING PUBLIC DOMAIN AFTER THE PASSAGE OF THE TAYLOR GRAZING ACT.

DISPOSAL WAS A PARTICULARLY COMPLEX PROCESS, GOVERNED BY LITERALLY THOUSANDS OF LAWS WHOSE ADMINISTRATION IN THE FIELD OFTEN DEVIATED GREATLY FROM THE PROVISIONS OF THE LAW" (Clawson 1983:20).

--Constant pressure to "liberalize" the disposition of public lands

--interests of speculators pressed

--demands of bona fide settlers pressed

--concerns of Jeffersonian democrats raised and articulated in pervasive 19th century concern for the yeoman and a "fee-simple empire"

--political popularity for free land mounted and tested

1842: W. Florida grants to frontier settlers

1850: Oregon Donation Land Act (for Ore. & Wash., 1850-1855)

? : New Mexico

[Total of some 10,000 claims for 3 m. acres]

--Program in place by mid-19th century:

--Homestead Act (1862): 160 acres

-waves of activity: 1880's 150m. acres filed on; only 40-50m. acres patented; new wave 1900-1920 in Pac NW

--Railroad and wagon road grants (1860's):

--Timber Culture Act (1873-82): 160 acres

-planting 40 acres 12' apart in trees; grow them 10 years

-10m. acres patented (of which 8 m. in treeless Kans., Neb., N. & S. Dakota)

--Desert Land Act (1877): 640 acres

-irrigating it within 3 years

-Philip Foss in Politics and Grass (1960) noted:

"THE EFFICIENT IRRIGATION OF 640 ACRES BY ONE MAN IS IMPRACTICAL TODAY WITH ALL THE MOST MODERN MACHINERY AT HIS DISPOSAL. IT WAS A FANTASTIC REQUIREMENT IN 1877. . . . THE SETTLER WAS UNLIKELY TO HAVE THE CAPITAL NECESSARY TO INSTALL SUCH AN IRRIGATION SYSTEM. EVEN IF HE HAD THE CAPITAL THERE WAS USUALLY NO SOURCE OF WATER" (Foss 1960:24)

-GLO presided over senseless ritual

-32m. acres entered; 8.3 m. acres
purchased under act

--Enlarged Homestead Act (1909): 320 acres

-stemmed from success of Kincaid Act (1904)
in Nebraska

-coincided with dry farming techniques with
summer-fallow system

-few successes; massive relinquishments and
cancellations

-1912 required proof in 3 rather than 5 years
to tighten law

-contributed to major range problems; plowed
grasslands; dust and erosion

--Stock-Raising Homestead Act (1916): 640 acres

-first effort of Congress to address
condition of stockraisers

-represented major shift in thinking from
viewing the yeoman farmer with hoe and
plow as focus of attention

-lured new competitors onto marginal lands

Impact of Disposal Programs, 1862-1934

(1) Rectangular survey system imposed landownership
patterns on America

-superimposed surveyor's squares on the
landscape without regard to topography

John Wesley Powell commented on the problems in this
system in his class Report on the Lands of the Arid
Region of the United States:

"MANY A BROOK WHICH RUNS BUT A SHORT DISTANCE WILL
AFFORD SUFFICIENT WATER FOR A NUMBER OF PASTURAGE
FARMS: BUT IF THE LANDS ARE SURVEYED IN REGULAR TRACTS
AS SQUARE MILES OR TOWNSHIPS, ALL THE WATER SUFFICIENT
FOR A NUMBER OF PASTURAGE FARMS MAY FALL ENTIRELY
WITHIN ONE DISTRICT. IF THE LANDS ARE THUS SURVEYED,
ONLY THE DIVISIONS HAVING WATER WILL BE TAKEN, AND THE

FARMER OBTAINING TITLE TO SUCH A DIVISION OR FARM COULD PRACTICALLY OCCUPY ALL THE COUNTRY ADJACENT BY OWNING THE WATER NECESSARY TO ITS USE (Foss 1960: 28)

(2) Land disposal system fostered filing on "key" tracts, permitting virtually a free use of public domain lands adjacent (inc. amount of lands retained by feds. than wud have happened under a topographical survey and disposition system)

(3) Jointly the survey system and the topographic realities created a nightmarish system for rational, scientific management

--checkerboard nature of grants to r.r. and wagon road companies

--nearly total lack of land organization by watershed, ecological units, or biotic considerations

(4) Distribution system aided, abetted, or encouraged speculation in marginal western lands

--led to undesirable tillage and removal of ground cover

--encouraged exploitive attitude toward fragile environments

--founded on political expediency and economic interests rather than on ecological awareness

--fostered conflict (such as that of cattlemen and sheepmen)

-homesteaders got land so small they were forced to use public land

--use of public land bred more conflict with competing users whose interests were legal or illegal

(5) Philip Foss has concluded that the land distribution system:

--was a series of political acts which resulted in land policies "THAT WERE NOT SUITED TO THE REGION AND THAT HAD THE EFFECT OF ENCOURAGING CONFLICT, INSECURITY, AND DISRESPECT FOR LAW" (Foss 1960:30).

#3 Reservation

1. Congress did little in 19th century to enable commissioners of the General Land Office to enforce laws, eradicate fraud, or protect against trespass:

- did not appropriate funds necessary for GLO staff to carry out those duties

- did not exercise oversight of GLO to prevent internal problems of mismanagement and plundering

2. In 1891 Congress passed the Forest Reserve Act, making possible the reserving of public domain lands as national forests

- by 1897 nearly 40m. acres so designated, but no provision for management or use

3. Other withdrawals (reservations) from 1909-1934

- waterpower sites

- phosphate, coal, oil sites for Naval Petroleum Reserves

- lands for nat. monuments, parks, wildlife refuges

4. Taylor Grazing Act (1934)

- end of public domain as grazing commons and est. of management system under Grazing Service

- 142 m. acres in program by 1936

- short-term licenses

- longer-term permits

- leases on land outside of districts

#4 Custodial Management

1. In 1897 Pres. Cleveland nearly doubled the forest reserves, setting aside 21 m. more acres, while Congress extended authority to manage these tracts

- no money

- no personnel

- no staff expertise to do so

- no "will to manage them constructively and effectively," noted Clawson

2. From 1891-1905 GLO had oversight of forest reserves.
Gifford Pinchot, who had a specific agenda, later
commented:

"THE MANAGEMENT WAS AWFUL. DIVISION P OF THE GENERAL LAND OFFICE AT WASHINGTON, TO WHICH THE DEPARTMENT HAD GIVEN THE RESERVES IN CHARGE, KNEW LITERALLY NOTHING ABOUT THEM OR WHAT OUGHT TO BE DONE WITH THEM. AT THAT TIME (1899) NOT ONE MAN IN DIVISION P HAD HAD EVER SET FOOT IN A FOREST RESERVE OR HAD EVEN SEEN ONE FOREST RESERVE TREE, UNLESS PERHAPS FROM A PULLMAN CAR WINDOW. THE ABYSMAL IGNORANCE OF THE WASHINGTON OFFICE ABOUT CONDITIONS ON THE GROUND WAS OUTRAGEOUS, PATHETIC, OR COMIC, WHICHEVER YOU LIKE. . . .

IN PRACTICE, THANKS TO LAX, STUPID, AND WRONGHEADED ADMINISTRATION BY THE INTERIOR DEPARTMENT, THE LAND LAWS WERE EASILY TWISTED TO THE ADVANTAGE OF THE BIG FELLOWS, AND WESTERN OPINION WAS SATISFIED TO HAVE IT SO. . . . (Clawson 1983:32).

3. Pinchot's critique coincided with public disclosures
about the internal dealings of the General Land Office

--highlighted by the "Oregon Land Fraud Trials"

Problems:

- dummy entrymen/entrywomen
- fraudulent "naming of the base" for lieu lands
- GLO commuting of residency requirements
- transfer of title from false entryman to timber company
- failure of r.r. and wagon road companies to dispose of lands per law
- multiple filings by same entryman/entrywoman
- involvement of Oregon politicians in scam

Judicial Solutions:

- Francis Heney named special prosecutor to investigate
- trials of J. N. Williamson (Prineville), House Charles W. Fulton (Astoria), Senator

Dr. Van Gesner (Prinveille), relatives
in Cadastral Survey crews
Marion R. Biggs (Prinville), GLO
John Mitchell (Portland), Senator,
convicted 1905

--dismissal of John H. Hall, U. S. Attorney,
(shielded friends)
James H. Booth, Receiver, GLO
Roseburg

--trials of Binger Hermann (Roseburg), U. S.
Commssioner of Lands

S. A. D. Puter's Looters of the Public Domain (1908)

Administrative Solutions:

--Est. in 1905 of U. S. Forest Service to
administer national forests in Dept. of
Agriculture

--Pinchot attracted able crew, est. decentralized
on-the-ground administration

--Pinchot est. "Use Book" for actions of ranger

--administered forests and grazing lands at low
level, 1905-1950

-modest timber sales: 1-3 b. feet/year

-little recreation management until 1930's

-reluctant wilderness designation

-some wildlife and watershed management

-fire suppression with state cooperation

4. General Land Office, 1900-1934, administered
unappropriated and unreserved lands:

--Clawson's assessment:

ITS MANAGEMENT OF THE PUBLIC DOMAIN FROM 1900 to 1934
MAY BE CHARACTERIZED AS CUSTODIAL, EVEN AS MAGESTERIAL.
IT ALLOWED (AND DISALLOWED, FOR LEGAL AND NOT FOR
CONSERVATIONIST REASONS) ORIGINAL HOMESTEAD, ENLARGED
HOMESTEAD, STOCK-RAISING HOMESTEAD, AND OTHER FORMS OF
ENTRY. IT ALSO ACTED SLOWLY ON LAND EXCHANGES, MANY OF
WHICH WERE INSTITUTED BY THE FOREST SERVICE, WHEREBY

PUBLIC DOMAIN OUTSIDE OF A NATIONAL FOREST WAS TRADED
FOR PRIVATE LAND WITHIN A FOREST.

--issued mineral leases

--lost grazing administration with creation of Grazing
Service in 1934 under Taylor Grazing Act (Division
of Grazing)

5. BLM--created in 1946 with merger of GLO and Grazing
Service

#5 Intensive Management, 1950-1960

1. Choice of date arbitrary, but 1951 was first year in
which federal lands generated more gross revenues than
total expenditures; decade produced c. \$20m. in
excess of outlays

--era of crescendo in timber harvests

1950 c. 4 b. board-feet

1960 c. 9 b. board-feet

--era of boom in recreation

1950 c. 30 m. visitors

1960 c. 90 m. visitors

--forage for wildlife inc. c. 50%

forage of domestic stock dec. c. 10%

--operating expenditures rose rapidly as did sales
return

--increased in gas-oil leases

1950 c. 30,000 on 25 m. acres

1960 c. 140,000 on 100 m. acres

--generated fourfold inc. in revenues

--recreation mounted steadily with longer life
expectancy, leisure time, paid vacations, motor
homes, off-road vehicles

2. Oregon dramatically involved in these developments:

--O & C volumes increased steadily:

1950 c. 400 m. board-feet/year

1960 c. 1 b. board-feet/year

#6 Consultation and Confrontation (1960-present)

--continuation of past trends, such as intensive management (acquisition, disposal, reservation, and management)

-acquisition: tidelands beyond 3 miles to 600 feet depth (Outer Continental Shelf)

-disposal: -allocations in Alaska to state and native claimants

-leases of oil and gas cont. but stabilized at c. 100,000 on 80m. acres

-sale of timber peaked at 12 b. bd-feet in 1973 and dropped to 9-10 b.

-reservation: mounting designation of wilderness thru studies, withdrawals, ending of logging and termination of road projects

2. Last two decades driven by three factors:

#1 Passage of major new laws

- Multiple Use-Sustained Yield Act (1964)
- Wilderness Act (1964)
- Classification and Multiple Use Act (1964)
- Trans-Alaska Pipeline Act (1973)
- Forest and Rangeland Renewable Resource Planning Act (1974)
- National Forest Management Act (1976)
- Federal Land Policy and Management Act (1976)
- National Wild and Scenic Rivers Act and Trails System Act (1968)
- National Environmental Policy Act (1970)
- Endangered Species Act (1973)
- Clean Air Act (1955), and amendments
- Federal Water Pollution Control Act (1972)
- Clean Water Act (1977)
- Wild and Free Roaming Horse and Burro Act
- Coastal Zone Management Act
- Bald and Golden Eagle Protection Act
- Noise Control Act
- Geothermal Resources Act

#2 Increased knowledge of resource matters by public,

--new popular attitudes toward the
agencies and toward the federal lands

--new abilities on part of gen. public to
influence fed. land managing agencies

#3 New role for courts

CONCLUSIONS:

Stages in BLM History:

- #1 Acquisition of lands
- #2 Disposal of lands (survey, recording, implementing
distribution laws)
- #3 Reservation of lands (withdrawal and classification)
- #4 Custodial management of lands
- #5 Intensive management of lands, 1950-1960
- #6 Consultation and confrontation, 1961-present

History founded on coping with several realities:

- #1 Managing vast amounts of land which no one, for the
moment, wanted
- #2 Implementing staggering variety of federal mandates
of growing complexity (acts of Congress, orders of
the President, decisions of federal courts)
- #3 Mounting program with minimal staff, limited
budgets, and contradictory legal mandates without
clear definition of priorities
- #4 Coming to terms with new "publics:" interest groups,
distant but potential "users" of public domain,
special agenda issues

...and ...
...and ...
...and ...
...and ...
...and ...

...and ...
...and ...

CONCLUSIONS:

...and ...
...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...

...and ...